

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

IN RE: INVESTIGATION OF  
UNIVERSITY OF SOUTH FLORIDA

Charge of Donald A. Maynard, M.D.

OCAHO Investigative Subpoena Nos. 20S00065,  
20S00066, 20S00067, 20S00068, 20S00069

**ORDER DENYING UNIVERSITY OF FLORIDA'S  
PETITION TO REVOKE OR MODIFY  
INVESTIGATIVE SUBPOENAS NOS. 20S00065-69  
AND AUTHORIZING REQUEST FOR ENFORCEMENT  
(May 16, 2000)**

On April 26, 2000, I issued five subpoenas upon request of the Office of Special Counsel (OSC) in the above styled investigation. On May 8, 2000, the University of South Florida (USF) filed a Petition to Revoke or Modify OCAHO Investigation Subpoenas Nos. 20S00065, 20S00066, 20S00067, 20S00068, 20S00069. On May 12, 2000, OSC filed an Opposition to the petition, with exhibits in support, filed a Motion to Expedite, and tendered a form of order overruling the petition and authorizing OSC to seek enforcement. This Order issues in lieu of the tendered version.

USF's petition recites that it had raised a jurisdictional challenge to an earlier subpoena issued by Judge Ellen Thomas (arising out of the identical Charge No. 197-17M-105). USF maintains that OSC lacks jurisdiction, invalidating the present investigation, because Donald Maynard filed a charge before the Equal Employment Opportunity Commission arising out of the same facts, an overlap prohibited by 8 U.S.C. § 1324b(b)(2).

With the cooperation of counsel for OSC and USF, I convened a telephonic prehearing conference today to provide an opportunity for the parties to address the issues. Neither party offering further argument, I advised that I concur in Judge Thomas' Order, 8 OCAHO 1055 (2000), denying USF's opposition to the subpoena. As I noted, our jurisprudence from the outset has held that "the prohibition against overlap between [8 U.S.C. § 1324b] and [EEOC] applies, according to the plain terms of the statute, to charges of national origin discrimination only, without regard to pendency of citizenship status charges arising out of an identical set of facts." *Romo v. Todd Corp.*, 1 OCAHO 25, at 125 (1988), available in 1988 WL 409425, at \*8

(O.C.A.H.O.).<sup>1</sup> Because the charge underlying the subpoenas at issue includes allegations of citizenship status as well as national origin discrimination and retaliation, the overlap prohibition does not bar OSC's investigation.

Accordingly, the USF petition is denied.

Consistent with our practice of authorizing the party requesting the subpoena to request enforcement pursuant to 8 U.S.C. § 1324b(f)(2), OSC is authorized, without further request, to seek enforcement in the appropriate United States district court, in the event the subpoenas, or any of them, are not complied with before the close of business on May 26, 2000. See *In re Investigation of University of South Florida*, 8 OCAHO 1055 (2000); *In re Investigation of Chan's Apparel*, 1 OCAHO 1 (1988).

SO ORDERED.

Dated and entered this 16<sup>th</sup> day of May, 2000.

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Marvin H. Morse  
Administrative Law Judge

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<sup>1</sup>Citations to OCAHO precedent refer to the volume and consecutive reprint number assigned to decisions and orders. Pinpoint citations to precedents in Volumes 1 and 2, ADMINISTRATIVE DECISIONS UNDER EMPLOYER SANCTIONS AND UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES LAWS OF THE UNITED STATES, Volumes 3 through 7, ADMINISTRATIVE DECISIONS UNDER EMPLOYER SANCTIONS, UNFAIR IMMIGRATION-RELATED EMPLOYMENT PRACTICES AND CIVIL PENALTY DOCUMENT FRAUD LAW OF THE UNITED STATES are to specific pages, serialim of the specific entire volume. Pinpoint citations to OCAHO precedents subsequent to Volume VII are to pages within the original issuances.